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ANALYSIS FOR STATE OF SOUTH CAROLINA

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Statute:

[S.C. CODE § 57-3-200](#); [S.C. CODE § 57-5-1310 et. al.](#)

Summary:

Allows South Carolina DOT to enter into PPPs.

Allows DOT to construct and operate turnpike facilities; § 57-5-1330(1)4 appears to permit SC DOT to use PPPs to develop these facilities. No express provision regarding the solicitation or acceptance of unsolicited proposals.

Key Elements of South Carolina's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Solicited only.	§136-89.194(b) permits the NC Turnpike Authority (which is administratively related to the NC DOT but legally independent).
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	Yes.	§136-89.183(a)(9) and (12).
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?		Under §136-89.183(a)(5), the NC Turnpike Authority may fix, revise, charge and collect tolls and fees for the use of the turnpike projects.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	Yes.	§136-89.183(a)(9).
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	Yes.	§136-89.171 authorized the construction of no more than two private toll road projects as pilots. §136-89.183(a)(2) and (3) permits the NC Turnpike Authority to construct and operate three turnpike projects and to study and undertake preliminary design work only on three additional projects.
6.	Are there restrictions concerning the geographic location of PPP projects?	Yes.	Under §136-89.183(a)(2), at least one of the three projects must be located in a rural county and at least one must be in an urban area of the state.
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	Yes.	Under §136-89.181(4), a "Turnpike Project" means a road, bridge or tunnel project only.

8.	Is there a legal requirement to remove tolls after the repayment of project debt?	Yes.	§136-89.196.
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	No.	§136-89.171 prohibits tolls on existing state roads. A similar restriction applies to the NC Turnpike Authority; see §136-89.187.
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	Yes.	§136-89.188.
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	§136-89.193(d) does require the NC Turnpike Authority to "consult and report" with certain legislative oversight committees prior to executing any PPP agreement. Note also that four of the nine members of the authority's board are appointed by the state legislature.
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No.	
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	Yes.	§136-89.194(c) authorizes the use of "alternative contracting methods."
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?	Yes.	§136-89.183(13) authorizes the NC Turnpike Authority to adopt its own procedures to govern its procurement of services and delivery of turnpike projects. See also §136-89.172(j) regarding NC DOT.
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§136-89.183(a)(4).
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	Yes.	§§136-89.183(a)(6), 189 and 190.
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No express provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	Yes.	§136-89.183(a)(11).
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	

20.	Can the agency charge application fees to offset its proposal review costs?	No express provision.	
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	No express provision.	
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	Yes.	§136-89.197 requires NC DOT to maintain an existing, alternate, comparable nontoll route corresponding to each turnpike project.
23.	Are there any non-compete clause prohibitions?	Yes.	See above discussion of §136-89.197.
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?		PPP authority for NC DOT appears to have expired. Remaining PPP authority appears limited to the NC Turnpike Authority.
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	No.	
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No.	
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	No express provision.	
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§136-89.183(a)(16).

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